

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of PERRY'UON MYANGEL
BOOTH, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

PERRY BOOTH III,

Respondent-Appellant,

and

BRENDA L. MCGEE,

Respondent.

UNPUBLISHED

May 15, 2008

No. 280381

Saginaw Circuit Court

Family Division

LC No. 06-030194-NA

Before: Donofrio, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

Respondent Perry Booth III appeals as of right from the order that terminated his parental rights to the minor child on the basis of MCL 712A.19b(3)(c)(i) and (g). We affirm.

Respondent challenges petitioner's decision to place the child in non-relative foster care rather than with his mother. In making a decision regarding a child's placement, petitioner was statutorily required to place the child in the most family-like setting available consistent with the child's best interests and needs. MCL 712A.1(3); MCL 712A.18f(3); MCL 712A.13a(10). Another consideration in placement decisions was petitioner's preference to keep siblings together. This preference has been recognized by Michigan courts in child custody cases, with the caveat that the preference was secondary to the child's best interests. *Foskett v Foskett*, 247 Mich App 1, 11; 634 NW2d 363 (2001). Finally, as part of the child's initial case service plan, petitioner was required to identify, locate, and consult with relatives within 30 days of the child's removal "to determine placement with a fit and appropriate relative who would meet the child's developmental, emotional, and physical needs as an alternative to foster care." MCL 722.954a(2); see also MCR 3.965(E).

In this case, respondent was incarcerated when the minor child was around four years old, and his earliest release date would not occur until after the child's nineteenth birthday. When the

child was seven years old, she and two half-siblings were removed from their mother's care. Respondent offered his mother as relative placement for the minor child, but the foster care worker determined that it was in the child's best interests to be placed with her half-sister since the two were bonded and each other's main support, the half-brother had already been placed separately, and the minor child had been a baby when she had last seen respondent's mother. Since respondent's mother could only care for the minor child, the child and her half-sister were placed together in non-relative foster care. Throughout the proceeding, respondent requested that visitation occur between his mother and the minor child. Such visitation was recommended but not ordered by the court, which left visitation in petitioner's discretion. At one point, the foster care worker reconsidered respondent's mother as a possible caretaker and investigated whether an adopted child in the care of respondent's mother was progressing well. However, after respondent's mother failed to produce the adopted child's report card, the foster care worker again decided against placing the minor child with respondent's mother.

This evidence shows that both petitioner and the court fulfilled their legal obligations when placing the minor child with her half-sister. In determining the need to place the child with her half-sister, the controlling factor was the child's best interests. Although the preference for keeping siblings together was important, it was the specific circumstances of the minor child's situation that governed. The minor child was bonded to her half-sister and unfamiliar with her paternal grandmother. Furthermore, her older half-brother had already been separated from the sibling group. When the foster care worker could not establish that an adopted child was progressing well in the respondent's mother's care, the child's best interests called for the continued placement of the child with her sibling. These placement decisions were neither arbitrary nor capricious and, instead, were supported by competent, material and substantial evidence on the whole record.

Finally, the trial court did not clearly err in finding that the termination of respondent's parental rights was not contrary to the child's best interests. MCL 712A.19b(5). If it is in the best interests of the child, the trial court may properly terminate parental rights instead of placing the child with relatives. *In re IEM*, 233 Mich App 438, 453; 592 NW2d 751 (1999); *In re McIntyre*, 192 Mich App 47, 52; 480 NW2d 293 (1991).

Affirmed.

/s/ Pat M. Donofrio
/s/ David H. Sawyer
/s/ William B. Murphy